

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

MARK VALDEZ,

Petitioner,

v.

CIV 03-0423 MCA/KBM

LAWRENCE TAFOYA, Warden, et al.,

Respondents.

**PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

This matter is before the Court on supplemental briefing by Respondent concerning the issue of the timeliness of Mark Valdez' § 2254 petition. *Doc. 14.* As noted in an earlier order, the petition is time-barred and subject to dismissal under the applicable one-year limitations period absent a basis for equitable tolling or a basis for considering an earlier attempted filing as "properly filed." *See Doc. 13.* For the reasons stated in the supplemental brief, which I incorporate by reference, I find neither exception applies to this case. Consequently, the petition is time-barred and the action should be dismissed.

Wherefore,

**IT IS HEREBY RECOMMENDED** that Respondent's motion to dismiss (*Doc. 11*) be GRANTED, Petitioner's motion for appointment of counsel (*Doc. 3*) be DENIED, and the § 2254 petition DISMISSED WITH PREJUDICE.

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the ten-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**

  
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UNITED STATES MAGISTRATE JUDGE